

1 chair in California in a few months. When we exchange our  
2 exhibits they will know who our witnesses are.

3 MR. FRIEDMAN: On the contrary, Your Honor, we are  
4 entitled to discover the witnesses who are going to testify  
5 against us. That's an elemental fact of litigation.

6 MR. SCHONMAN: Absolutely true, and --

7 MR. FRIEDMAN: And he's telling -- excuse me,  
8 Mr. Schonman, may I answer? He's telling us that the first  
9 time we may know of who his witnesses are is when he gives us  
10 direct testimony. That's not how the game is played, Your  
11 Honor. This is ambush he's talking about. I need to know who  
12 he intends to call so I can depose them and prepare my cross-  
13 examination and my rebuttal to him and I'm going to tell him  
14 who we intend to call and he can do the same.

15 MR. SCHONMAN: May I respond, Your Honor?

16 JUDGE SIPPEL: Yes, you may.

17 MR. SCHONMAN: Mr. Kay's counsel has requested us to  
18 identify individuals who have information about the facts in  
19 this case and we have identified those individuals and  
20 Mr. Kay's counsel is free to depose any or all of those  
21 individuals, and it was a lengthy list of individuals who we  
22 believe have information or knowledge about the facts of this  
23 case. Now, we may call all of them, we may call some of those  
24 people. But Mr. Kay's counsel is free to depose every one of  
25 them. They have that right. And from among that group will

1 | come our list of witnesses and we will reveal that list of  
2 | witnesses. In fact, we will identify for ourselves those  
3 | witnesses on the day that we exchange the exhibits with  
4 | Mr. Kay's counsel. But he does have a list of individuals who  
5 | have facts or knowledge about -- who have information and  
6 | knowledge about the facts in this case and they are free to  
7 | speak with every one of them.

8 | JUDGE SIPPEL: That list that was furnished pursuant  
9 | to your response or the Bureau's response to their  
10 | interrogatories?

11 | MR. SCHONMAN: Absolutely.

12 | JUDGE SIPPEL: So, you got that list. That's one in  
13 | the universe. You've -- no, you haven't identified, but  
14 | you've made your estimate of eight people to depose based on  
15 | what you know now at this point.

16 | MR. SCHONMAN: Um-hum.

17 | JUDGE SIPPEL: And it's going to reach a point in  
18 | time that is not going to be too distant in the future that  
19 | I'm going to want both sides to exchange the list of people  
20 | that they want to depose so that we can get this show on the  
21 | road. I don't want to have to wait for notices -- you know,  
22 | everybody sit -- I can't wait till I get their notice so I see  
23 | who they're going to depose. Everybody sits down and you say,  
24 | all right here's my guys, people that I want to depose and the  
25 | other side says here's the ones that I want to depose and to

1 the extent that there's overlap you can set them up and you  
2 can conduct your depositions and get accomplished the same  
3 thing at the same time. To the extent that there isn't any  
4 overlap, you still work out your schedule and then you -- and  
5 then if you need a notice, if you need a subpoena because you  
6 have a nonparty witness, you know, then we can do that. But  
7 we don't have to do that if you got people who you have  
8 control over or who are willing to cooperate as long as I know  
9 who they are and when they're going to get taken. That's all.  
10 So, I mean, this can be done.

11 MR. SCHONMAN: We'll certainly provide you with a  
12 list of people who we want to depose. We're required to do  
13 that. We're required to give Mr. Kay's counsel notice of the  
14 individuals who we intend to impose. We'll certainly follow  
15 the rules in that respect.

16 MR. FRIEDMAN: That still doesn't answer the issue,  
17 Your Honor, if their holding back ambushed testimony or  
18 ambushed witnesses. They don't have to get a deposition of  
19 somebody who they want to talk to voluntarily who they believe  
20 will come into the room voluntarily.

21 JUDGE SIPPEL: I hear what you're saying on that  
22 one, Mr. Friedman. I was focusing more on the -- what I would  
23 say the traditional type of witnesses at least in the  
24 Commission cases that we've been dealing with here and that is  
25 usually it's somebody that's going to be a material -- well, I

1 hate to use that term material. But anyway, somebody who's  
2 been deposed. There are normally not people who are brought  
3 in without a deposition. If that happens we'll come to that.  
4 There will be an appropriate time to issue an order with  
5 respect to that a minimum, at a minimum, based on the order  
6 that issued back I think in June -- well, I'll tell you  
7 exactly where it is. It's my order number 95-M-106 that was  
8 released back on April 17th. When you exchange your witness  
9 list there's going to have to be a summary of what the witness  
10 is going to testify at a minimum. As I've indicated in there,  
11 what I'd like to see is whoever is going to call the witness  
12 would sponsor the witness with the sworn written testimony up  
13 front so that we can move that process along. But at a  
14 minimum you're going to get an explanation as to what that  
15 witness is going to testify to. And I don't think that there  
16 is a court that's going to give you much more advanced notice  
17 than that with respect to nondeposed witnesses. I'm not  
18 looking for ambush. I'm certainly going to do everything I  
19 can to avoid it. But I would think that in light of what's at  
20 stake here and in light of the complexity of the issues, the  
21 factual complexity of these issues in this case, I would be  
22 surprised there's going to be too many witnesses that you  
23 would not have seen at a deposition that are going to be  
24 exchanged by the -- and of course you get the right to cross-  
25 examine and if it really is a surprise you do have the remedy

1 -- you know, I've done this before both as an attorney and as  
2 a judge, but you can get -- you could get the right to depose  
3 that witness before he hits the stand if you can make a case  
4 out for it.

5 MR. SCHONMAN: Your Honor, I can assure you and  
6 Mr. Kay's counsel that the only witness who -- call to testify  
7 for our case will come from among the list of people who we  
8 have identified to Mr. Kay's counsel already, those people who  
9 have information and knowledge about the facts in this case.

10 MR. KELLETT: We haven't been to L.A. We can't make  
11 an absolute guarantee, but that's --

12 JUDGE SIPPEL: We're talking about as of today.

13 MR. SCHONMAN: Yes.

14 MR. KELLETT: We're not holding anything back in  
15 terms of who --

16 MR. SCHONMAN: As of today. Now, I hardly think  
17 that can be identified as ambushed litigation. Mr. Kay's  
18 counsel has a list of individuals who we believe at this point  
19 have information and knowledge about the case. If we decide  
20 to use one or more of those individuals to testify and they  
21 become our witnesses, I hardly think that we're required to  
22 depose our own witnesses. Mr. Kay's counsel can depose any  
23 people on that list, all of them if they wish. But if they  
24 choose not to depose Individual A on the list that we've  
25 already provided and we decide to use that person, that's not

1 a surprise to them; they had full knowledge that that person  
2 might be testifying. That's not ambushed litigation.

3 JUDGE SIPPEL: I don't want to delay this anymore.

4 MR. FRIEDMAN: I don't want to belabor it, but I  
5 mean there's a little fairness, and there's a game -- well, it  
6 could be down, you know, one from Group A and one from Group  
7 B, tell us who you're looking at and we'll deal with. I mean,  
8 I don't want to build up my own client's costs either with  
9 unnecessary depositions of people they don't -- that may have  
10 been a name that they have in the files but they don't intend  
11 to use. I mean, let's be fair. We'll tell you who we intend  
12 to use and you tell us and we'll depose the people who count  
13 and leave off the expense of running around the countryside to  
14 find people who have no relevance to this matter.

15 MR. KELLETT: Judge Sippel, perhaps this can be  
16 resolved in the context of establishing a deadline in the  
17 overall context of establishing a schedule. I think it's fair  
18 to say that this case which we've been in for all of five days  
19 is characterized by an effort by Mr. Kay to learn the  
20 particulars of the allegations against him and I must say I'm  
21 somewhat dismayed to hear that we -- one side of the  
22 government's counsel that they may given us the list of  
23 potential deponents and from another that they're not. At  
24 some point there has to be a line drawn in fairness to Mr. Kay  
25 as Barry Friedman indicated.

1 JUDGE SIPPEL: Well, I hear you, I hear everything  
2 that you're saying on that, but as has been told to me by --  
3 as I'm hearing this from the Bureau's side of this case,  
4 they've given you a list -- they've given Mr. Kay a list of  
5 names in response to interrogatories and that list of names is  
6 now as of today anyway, it is the -- plus whatever else they  
7 have identified in their, in their statement, but that's --  
8 you've got the universe of the prospective targets for  
9 depositions. How many -- I mean, what's that rough number?

10 MR. SCHONMAN: Your Honor, it's a prospective list  
11 of witnesses we might use who -- we don't plan to depose our  
12 own witnesses.

13 JUDGE SIPPEL: No, I said prospective. Well, all  
14 right, they're -- but these are prospective witnesses for the  
15 Bureau some of which you may depose, some of which you may  
16 not; none of which you may depose.

17 MR. SCHONMAN: Correct.

18 JUDGE SIPPEL: But you're considering them for  
19 depositions.

20 MR. SCHONMAN: We're considering them for testimony  
21 at the hearing.

22 JUDGE SIPPEL: You're not considering any  
23 depositions in this case other than Mr. Kay and these other  
24 two people?

25 MR. SCHONMAN: Your Honor, I believe there are two

1 categories of witnesses, witnesses that we will use for our  
2 case and Mr. Kay's witnesses. There is a list of witnesses  
3 who will support our position. Those are witnesses. We're  
4 not going to depose them, we're not going to go to the expense  
5 of deposing them. But Mr. Kay certainly knows who they are  
6 and he can depose them. Now, Mr. Kay I assume is going to be  
7 a witness for Mr. Kay and we're going to depose him because  
8 he's a witness for the other side.

9 JUDGE SIPPEL: All right, and how about --well,  
10 there is -- well, all right, there are -- well, I don't want  
11 to get into generalities. You're telling me specifically what  
12 you have in mind as of today and I'm accepting it that way.  
13 The point is, is that Mr. Kay's counsel has the list of  
14 today's universe of the potential witnesses that you may be  
15 calling when we go to hearing.

16 MR. SCHONMAN: Correct.

17 JUDGE SIPPEL: And these are the list of the people  
18 whose summary of their proposed testimony will be exchanged on  
19 the date that you have to exchange witness testimony, correct?

20 MR. SCHONMAN: Those people from that list who we  
21 decide to have testify at this hearing, on the exchange date  
22 we will identify them and if their testimony is not reduced to  
23 writing we will provide a summary of what they will testify  
24 to.

25 JUDGE SIPPEL: That's just what I think that I said.



1 MR. SCHONMAN: Yes.

2 JUDGE SIPPEL: The point is, is that from the  
3 universe we've talked about, they have the names of those  
4 people now --

5 MR. SCHONMAN: Yes, sir.

6 JUDGE SIPPEL: -- from which will be drawn your  
7 witnesses --

8 MR. SCHONMAN: Correct.

9 JUDGE SIPPEL: -- under the procedures you've just  
10 described. And I know that we have new counsel in the case,  
11 but we went over this I can remember, it's starting to come  
12 back to me now. But we had a big point in here about, you  
13 know, normally the Commission does is they -- everybody  
14 exchanges cases on the same day, but because of questions that  
15 were raised about the notice in the hearing designation order,  
16 in my discretion I said okay, here's what we're going to do.  
17 The Bureau is going to give you their case first and then  
18 you're going to get about 10 days or two weeks to give them  
19 your case. Now, that is -- in my experience 10 years at the  
20 FCC's hearing, that is -- that's a significant benefit that  
21 you've been given in terms of your preparation. So now what  
22 you have is you've got a universe -- as of today you got a  
23 universe of all the potential witnesses that they may call.  
24 You're going to get their cases delivered to you up front and  
25 you're going to have at least 10 days' to two weeks' notice of

1 exactly what those people are going to testify to. If you  
2 think that you're getting sandbagged you'll have time to come  
3 to me and ask for a deposition. Chances are Mr. Kay is going  
4 to know these people pretty well, but I -- again, I don't want  
5 to get ahead of myself on the evidence because I don't know  
6 how that's all going to come out. But I want to ask the  
7 Bureau now because you're new to the case, Mr. Friedman, but  
8 approximately how many numbers -- I mean, what is the number  
9 of people that you've identified in that fashion?

10 MR. SCHONMAN: Ten to fifteen, Your Honor.

11 JUDGE SIPPEL: Ten to fifteen. Can't you go out and  
12 talk to 10 to 15 people?

13 MR. FRIEDMAN: That's fine, Your Honor, as long as  
14 we, as long as we have some comfort that there are the  
15 potential witnesses are named and under the obligation to  
16 continue to update interrogatories, should there be additional  
17 names that we're aware of we'll take the economic burden of  
18 doing that. We're just concerned about finding an individual  
19 we've never had a chance to up-front do discovery on. That's  
20 all.

21 JUDGE SIPPEL: Well, that's a good point. Again,  
22 we're all just getting back into the swing of things here, and  
23 I will say that from the bench that both sides have the  
24 obligation, continuing obligation to update the answers to  
25 interrogatories if more information is forthcoming. But on

1 the other hand, some things may slip through the cracks. I  
2 mean, people are going to have to be very conscious on both  
3 sides of looking for information. I mean, that's why we have  
4 conferences and that's why we have the discovery procedure.  
5 So, be mindful of that is all I want to say at this point, but  
6 that's a very important point. I want to get back, however,  
7 to what we're talking about here about why all this time is --  
8 now, we're talking about 10 of 15 people and you have a  
9 considerable number of documents, the Bureau does. And you've  
10 listed people that you want to -- you think are going to be  
11 your witnesses and there's not too many on that list. Let's  
12 start with -- so, that shouldn't take a heck of a lot of time  
13 to find out what those people are going to testify to. And I  
14 don't know, where do you stand as far as discovery of  
15 documents from the government?

16 MR. FRIEDMAN: We have received some. We'll be  
17 asking for more, Your Honor.

18 JUDGE SIPPEL: Well, there are specific rules that  
19 cover getting documents from the government. I'm sure you're  
20 aware of them. It's Commission rules and I'm going to set  
21 some kind of -- I mean, really, I want you to move on those  
22 fast. I don't want to give you a deadline yet, but certainly  
23 -- well, I want --

24 MR. FRIEDMAN: Your Honor, one issue we've always  
25 been looking for is a bill of particulars from the government.

1 JUDGE SIPPEL: I understand that, but before I get  
2 to that I want to -- if you're going to move, if you're going  
3 to move for more documents, I want to be sure that that motion  
4 gets filed promptly and I'm going to give -- I don't see why  
5 you couldn't do that by the 31st. Because you know what the  
6 categories of documents are that your prior counsel as asked  
7 for. I mean, you must have -- I mean, I don't think that  
8 there is -- there's nothing like the number of documents that  
9 are going -- Mr. Kay to the Bureau. Let me set that down. In  
10 other words, if you want more document discovery from the  
11 Bureau you ask for it by motion by October 31st. And then  
12 Mr. Schonman, I'm -- as I said, I'm going to be out of town so  
13 you can respond to it in the normal course under the rules as  
14 the time permits and I'll get to that when I return. Now, you  
15 want a bill of particulars, and we've been through that  
16 before. Let me -- you've stated your position. Let me ask  
17 Mr. Schonman to respond to it and let me see if we can get  
18 this -- I don't know if we can get it resolved, but let me see  
19 if we can at least get it settled for today.

20 MR. SCHONMAN: Well, it appears to me that in the  
21 discovery that took place prior to this day Mr. Kay requested  
22 all the facts that form the basis for every one of the issues  
23 that have been designated and the information that we provided  
24 in response to that request of those requests covered  
25 information that could conceivably be included in a bill of

1 particulars. In other words, the short answer is Mr. Kay has  
2 the information already.

3 JUDGE SIPPEL: Well, is there, is there -- there is  
4 -- I don't believe that there's a procedure in the rules for a  
5 bill of particulars.

6 MR. SCHONMAN: Well, there's certainly no provision  
7 in the HDO that required the Bureau to provide a bill of  
8 particulars.

9 JUDGE SIPPEL: Is there something that -- do you  
10 have a procedural rule in mind when you say bill of  
11 particulars?

12 MR. FRIEDMAN: No, I don't Your Honor, but I was  
13 just looking, last week the Mass Media Bureau designated for  
14 hearing the revocation of licenses in television and radio and  
15 I noted in reading through the HDO because I was curious about  
16 that, there was a specific reference to there being a bill of  
17 particulars and I've gone back as part of this exercise and  
18 looked a number of other designations and again I've seen in  
19 those words revocation designations that the Commission does  
20 customarily provide for a bill of particulars. We did do the  
21 research and attempted to locate precedent as to doing that.  
22 The precedent turns out to be only in these HDO's, but I think  
23 it is customary and perhaps there was an oversight here in  
24 Private Radio/Wireless when they were drawing this that they  
25 didn't mention that. But I think just looking at just the

1 most recent HDO designating a revocation that there was a  
2 right for that and we're just asking for something that is  
3 customary at the Commission level and I have seen no reason  
4 why we shouldn't get it.

5 MR. SCHONMAN: Your Honor, two things. Number one,  
6 if it's customary in the Mass Media Bureau, I can't say for a  
7 fact that it's customary in the Wireless. But all that aside,  
8 if for some reason the Wireless Bureau violated a custom, I  
9 don't think that would require the Bureau now to provide a  
10 bill of particulars. In any event, all that being said,  
11 Mr. Kay has already been provided with the information that  
12 would have been provided in a bill of particulars had the HDO  
13 required the Bureau to provide a bill of particulars. In  
14 other words, it's harmless error if the Bureau did violate  
15 something because Mr. Kay has the information already.

16 MR. FRIEDMAN: Your Honor, this wasn't a Bureau  
17 matter, it was a Commission designation. It may be a Mass  
18 Media case versus a Private Radio case, but this came from the  
19 Commission. The Commission issued the HDO, that's customary.

20 JUDGE SIPPEL: Which case are you talking about?  
21 This case?

22 MR. FRIEDMAN: This case, yeah.

23 JUDGE SIPPEL: I know the Commission issued it in  
24 this case.

25 MR. FRIEDMAN: But likewise, in the case of a week

1 ago, I'm sorry I didn't bring it with me, there was revocation  
2 for the fellow who I guess Judge Steinberg is handling with  
3 the drug problem or whatever or the child problem, but that  
4 was specifically in there and again Commission HDO. I think  
5 we're entitled to it, there was an oversight, let's rectify  
6 the oversight, let's get it out on the table. I don't -- I  
7 would like to have it out there rather than gleaning through  
8 some statements that they have to determine what the  
9 Commission's bill of particulars is. I think that  
10 Mr. Schonman can prepare that and give it to us and we'd know  
11 where to go.

12 MR. SCHONMAN: Your Honor, the time for seeking  
13 reconsideration of this HDO is long past. Kay already has the  
14 information that would have been provided in the bill of  
15 particulars had the Commission in its wisdom required the  
16 Bureau to file one.

17 JUDGE SIPPEL: It seems to me that I did address  
18 this. I mean, I'm not sure if it was literally like this, but  
19 I did address this and I did give Mr. Kay some relief and I'd  
20 have to go back and review the order file again. It was early  
21 on in the case. But I agree with what Mr. Schonman says, it's  
22 the Commission's order and the Commission is reluctant -- I  
23 mean, the practice here is -- there's a reluctance to have the  
24 Commission amend its hearing designation order once the case  
25 gets before an Administrative Law Judge.

1 MR. FRIEDMAN: Your Honor, it's within your  
2 discretion to order that.

3 JUDGE SIPPEL: Well, if I'm ordering it to the  
4 extent of -- your precedent you say is in hearing designation  
5 orders. It's not, it's not within my discretion to amend a  
6 hearing designation order. It's in my discretion to grant you  
7 relief in discovery or notice and I think I've done that to an  
8 extent. That's before you were in the case. Mr. Schonman?

9 MR. SCHONMAN: My colleagues are informing me that  
10 early on Your Honor granted Mr. Kay the right to ask 10  
11 questions about each issue.

12 JUDGE SIPPEL: That's right. I did. In fact,  
13 that's even better than a bill of particulars.

14 MR. HOLLINGSWORTH: Your Honor, I think that he said  
15 he'd been counsel for five days. We have a lot of paper in  
16 this proceeding. I think when they go back and read through  
17 your orders they'll see that all of these issues have been  
18 addressed, how they tried to appeal the HDO in many different  
19 ways, how you granted them 10 extra questions per issue. As  
20 Mr. Schonman just said, I think all of this has been addressed  
21 and maybe we're taking a lot of time here, if they were more  
22 familiar with these earlier orders, and it's a lot of orders,  
23 I grant that, I think all these issues have been addressed.

24 JUDGE SIPPEL: Now I recall that, exactly. That's  
25 right, I gave Mr. Kay interrogatories on the HDO allegations



1 and he got answers. So, and that was over the objection of  
2 the Bureau, so I mean it was -- for all the reasons that have  
3 been stated here I'm going to deny that request for a bill of  
4 particulars. Now, this brings me to the dates. We really got  
5 to get the dates set. And I know that based on what you've  
6 told me, I don't know anything about what the documents are  
7 that may or may not be forthcoming. And I'm sensitive to the  
8 concerns about having to assimilate and assemble and review  
9 considerable numbers of documents. But notwithstanding that,  
10 I still think that this case can get ready and that discovery  
11 can be concluded by the 23rd of February. And I say that  
12 basically because of the number of witnesses. I mean, this is  
13 not going to be -- the way it's setting up now anyway, this is  
14 not going to be that big of a case as far as witnesses go.  
15 I'm hoping I'm right on that, but this is the way it's looking  
16 to me. The Bureau will -- now, I'm going to get a written  
17 order out on this but you're going to want to get these dates  
18 I'm sure. The Bureau will exchange its exhibits and its sworn  
19 testimony, and again, the guidelines for the procedures are  
20 set out in that earlier order of April of '95, that is 95-M-  
21 106. So, I'm just going to give you the shorthand version  
22 here. The Bureau exchanges its exhibits and its proposed  
23 testimony by the 11th of March. Mr. Kay exchanges his  
24 comparable documents, that is, documents plus witnesses and a  
25 summary of their testimony or -- by the 25th of March. Now,

1 that gives him a considerable period of time to see what the  
2 Bureau is giving him before he even responds. Witnesses will  
3 be notified for cross-examination on the 28th of March and  
4 there will be a time in there when I'll provide for objections  
5 to be filed and then on the admissions session of April the  
6 2nd I can rule on those requests for cross-examinations. Now,  
7 what I want to do on April the 2nd is start with the  
8 admissions session, make a determination on cross-examination,  
9 get Mr. Kay's testimony and other witnesses that are D.C. --  
10 that are located in the D.C. area. I think it's important to  
11 get Mr. Kay right up front because it's going to give me a  
12 better focus on relevancy objections when we get out to Los  
13 Angeles with some of these what I would say, you know, maybe  
14 the lesser witnesses. And I think that it would do the case a  
15 service to have him come in right up front and how both sides  
16 are going to handle him, whether it's going to be a hostile  
17 witness that you're going to call, Mr. Schonman or, you know,  
18 however, that can be worked out between now and then. And  
19 then the L.A. hearing would start out there on the 30th of  
20 April. And again, I'm going to urge as much as possible  
21 between now and then to do -- to use as much discretion as you  
22 can to get witnesses to testify here in Washington, D.C. All  
23 the lawyers are from Washington, D.C. and the Commission  
24 doesn't have a heck of a lot of money and probably won't have  
25 a lot of money in April, but we'll do what we have to do.

1 Rebuttal if any will be in Washington, D.C. unless there's  
2 cause shown to go back out to L.A., but if any. I'm not  
3 suggesting that -- I haven't determined that there would be  
4 any, but -- and I'm going to again urge that counsel who are  
5 sponsoring a witness reduce the witness's testimony to the  
6 written form and then turn the witness over for cross-  
7 examination and spend as little time possible drawing out  
8 direct testimony on the stand. And that's about it. The only  
9 thing that's left on my list of concerns is the -- you've  
10 indicated, Mr. Friedman, that you want to depose and possibly  
11 call as witnesses Mr. Hollingsworth and one or two other  
12 people from the Bureau.

13 MR. FRIEDMAN: That's correct, Your Honor.

14 JUDGE SIPPEL: The only way that -- well, let me  
15 hear from the Bureau with respect to that. I mean, there are  
16 procedures for -- that limit that right, but --

17 MR. SCHONMAN: Your Honor, we've already gone over  
18 this prior to this day when Mr. Kay requested just about  
19 everyone from Reed Hundt down to be deposed and/or called as  
20 witnesses and I believe you admonished Mr. Kay at that time  
21 that he'd have to jump over a high hurdle to drag in  
22 Commission employees to testify or even to depose them without  
23 a reasonable basis. I can't imagine any reasonable basis for  
24 deposing or calling as witnesses any of the Commission  
25 employees identified on Schedule A.

1 JUDGE SIPPEL: Why are they named, Mr. Friedman?

2 MR. FRIEDMAN: We believe that there is information  
3 that we can use to defend the case. The actions taken by the  
4 staff in serving here, the contacts, the claims that may have  
5 been made that they may have taken actions that serve to  
6 prejudice our client and we would put that on the witness  
7 stand to evidence that in support of his position that he has  
8 not violated any rules and in fact in some areas that it may  
9 have been the Commission's staff that violated the rules and  
10 it has prejudiced him thereby.

11 JUDGE SIPPEL: Well, have you read what I've written  
12 on this before?

13 MR. FRIEDMAN: Yes, we have, Your Honor, but we  
14 still --

15 JUDGE SIPPEL: You still --

16 MR. FRIEDMAN: -- we're still maintaining our  
17 position.

18 JUDGE SIPPEL: Well, my position isn't going to  
19 change at this point unless I'm ordered otherwise. And I'm  
20 also cognizant of the fact that although it's not active that  
21 there is a pending civil action out in Pennsylvania.

22 MR. SCHONMAN: That's dismissed.

23 JUDGE SIPPEL: That's been dismissed?

24 MR. SCHONMAN: That was dismissed.

25 JUDGE SIPPEL: Well, thank you for telling me.

1 MR. FRIEDMAN: Are you denying the request or you're  
2 leaving it to us to seek a deposition of them and then you'll  
3 act on the --

4 JUDGE SIPPEL: Well, no, I -- whatever my -- I have  
5 not read that ruling -- that precise ruling before coming in  
6 here today so whatever my ruling was, that's the way it will  
7 stand. Whatever rights you feel -- procedural rights you feel  
8 that you have, I expect that you'll use them. But I, I can --  
9 I mean, I -- the chances are based on what I've done before  
10 that I'm not going to give you relief, at least not in this  
11 court. You got different lawyers, you got -- but the facts,  
12 the facts of the case haven't changed.

13 MR. KNAUSS: Well Judge Sippel, we'd certainly like  
14 the opportunity to brief the issue. I think it's fair to say  
15 the facts of the case are emerging, they're not out yet and  
16 despite the position of government counsel that the record has  
17 been answered and the 10 questions per issue, we're at the  
18 beginning of the discovery process in our view and we would  
19 welcome the opportunity to address this issue formally.

20 JUDGE SIPPEL: Which issue are you talking about  
21 now?

22 MR. KNAUSS: Of the legitimacy of depositions of  
23 government counsel.

24 JUDGE SIPPEL: Everybody has got an awful lot of  
25 work to do and I certainly don't want the government --

1 whatever I have ruled in this I have ruled and I'm very  
2 disinclined to reconsider a ruling such -- of that nature.

3 MR. HOLLINGSWORTH: Your Honor, may I speak?

4 JUDGE SIPPEL: Please do.

5 MR. HOLLINGSWORTH: I can understand their need to  
6 be brought up to date on the case since they've been counsel  
7 for five days in this very voluminous case. I can't  
8 sympathize with their wanting to start the case over again  
9 just they just came in on it. We executed a memorandum of  
10 understanding 120 days ago, everything stayed for them to  
11 achieve this settlement. Settlement is not here. He's had  
12 all that period, everybody has had all that period to get  
13 familiar with everything. They're wanting to start the case  
14 over and go over all the issues that you've already ruled on,  
15 and some were appealed even at the time. So, I can understand  
16 their coming in late but not starting the case over because it  
17 has been going on quite a while and we're ready to move on  
18 with it.

19 JUDGE SIPPEL: I must say that in light of the fact  
20 that these dates that I've set are firm dates and there's a  
21 heck of a lot to do as far as discovery and trial preparation.  
22 I just can't see going back over an issue like that and  
23 inviting you to come in with more briefing because it's going  
24 to put the -- I mean, the government is going to have to  
25 respond to it and I think Mr. Hollingsworth is right, that

1 we're going to end up going back over rehashing ground that  
2 we've already been through. And it's unfortunate that you're  
3 coming into the case that way, but that's just the way it is,  
4 you have to come into the case and take it the way it is.

5 MR. HOLLINGSWORTH: Your Honor, may I add something  
6 else?

7 JUDGE SIPPEL: Yes, you may.

8 MR. HOLLINGSWORTH: The Pennsylvania case was  
9 dismissed and in that case in a 14-page decision the judge  
10 said that Mr. Kay was attempting to intimidate government  
11 employees and prevent them from doing their job. I would hope  
12 that those days are over. This seems to be a continuance of  
13 that listing us again here when this has already been done.  
14 I'd like to see a change in their demeanor in that regard. It  
15 takes a lot of time. It wastes a lot of time on both sides to  
16 have to respond to allegations like that. We would hope that  
17 the judge's statements in the Pennsylvania case put all that  
18 to rest.

19 MR. FRIEDMAN: We certainly take exception to that  
20 aspersion that we're trying to intimidate government counsel.  
21 That's not --

22 MR. HOLLINGSWORTH: Well, I can cite language if you  
23 wish from it.

24 JUDGE SIPPEL: Well, let's --

25 MR. FRIEDMAN: Today no one is attempting to harass

1 anybody. What happened happened and we are still attempting  
2 to prepare this case and to defend.

3 JUDGE SIPPEL: I know what it was about that  
4 Pennsylvania case that got me to raise this. I'm aware of the  
5 fact that it was dismissed and I've read that decision. I  
6 have that decision. I'm aware of that, but I believe that it  
7 was dismissed without prejudice. I believe that's what  
8 happened, which means that it's dead but it's not buried. I  
9 mean, that's how I interpret it anyway.

10 MR. FRIEDMAN: Certainly, I think as the government  
11 is aware that there's been no further complaint filed in that  
12 matter and no attempt to bring it back up and resuscitate it.  
13 So, we are certainly not involved in any such matter.

14 JUDGE SIPPEL: Okay, but I want -- well, all right,  
15 but I was just letting you know that I -- you know, I am very  
16 sensitive to what went on out there in Pennsylvania and I'm --  
17 you know, there is this continuation of trying to get these --  
18 the government's attorneys, the staff attorneys on the record  
19 for -- to depose when the facts and evidence that are being  
20 charged in this case all have to do with Mr. Kay's operations  
21 of his licenses of his stations. And I don't want to have to  
22 rehash what I've already done, but I'm just saying that I am  
23 sensitive to the things that Mr. Hollingsworth is saying. I  
24 want to be sure that there is not a rehash of any of that, and  
25 I'm not going to offer up the government attorneys to be put



1 on the stand to be deposed for purposes that are suspect at  
2 best.

3 MR. FRIEDMAN: I can assure that that's not our  
4 intention. It would only be where we have determined through  
5 discovery and investigation that there may be some facts that  
6 relate to how the government handled processing of  
7 applications that impacted detrimentally to our client and as  
8 a result led to the government's own going forward and  
9 designating this matter for hearing.

10 JUDGE SIPPEL: Well, you're going to have to bring  
11 that -- you know, it's subject of course to objections on  
12 relevancy grounds and what my rulings might be, but you're  
13 going to have to develop a record in the course of the hearing  
14 and if there is an issue raised as a result of either your  
15 discovery -- your deposition discovery, your document  
16 discovery and during the course of the hearing that prompts a  
17 -- that presents a real hard showing of cause on a very  
18 specific issue to bring in a government witness then subject  
19 to the procedures that the Commission has provided for doing  
20 that, you know, that's -- it's a possibility.

21 MR. FRIEDMAN: That's all we --

22 MR. AITKEN: That is satisfactory to us. The last  
23 thing we want to do is to resurrect the Pennsylvania case.  
24 That's not what we came here for today, but I think you've  
25 focused properly on our objective.